The Solicitors' Journal

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CURRENT TOPICS

Solicitors and Barristers: Class Distinction?

At the dinner given by the London (Criminal Courts) Solicitors' Association on 27th April a London solicitor suggested that it was time that the archaic class distinctions between barristers and solicitors should cease. He regretted that the chairman of the General Council of the Bar was not there to hear him. The distinctions of costume as well as the taboos concerning their Inns, where counsel are not permitted to entertain their solicitor friends, are apparently resented by some solicitors, and, according to a writer in the *Star* (1st May), by young barristers, although not by "the older barristers and the all-powerful Benchers." The case for abolition is that at one time, before a recognised status was given to solicitors in Victoria's reign, barristers were rightly forbidden to indulge in the practice of "attorney-hugging," and, no doubt it is argued, the *de facto* modern equality of the so-called "lower branch" is a sound reason for sweeping away all restrictions on the professions intermingling on an equal footing. There is, of course, another side to the picture. If one may adapt a well known legal maxim, soliciting for work must not only not be done, but also must not seem to be done, and this seems a strong enough argument in favour of retaining some of the restrictions. Many of them have already vanished. It is no longer required of the Bar that they should travel first class so as to avoid the contaminating contact with solicitors in the third! And it is not considered wrong that there should be a joint committee of the governing bodies of the two professions in order to deal with matters of common interest.

Who Is Your Trustee?

Mr. F. W. Smith, in the *Financial Times* of 5th May, expressed an opinion on "the perfect trustee" which should interest solicitors. He wrote: "The perfect trustee has a knowledge of the law affecting trusts, can deal with all types of assets (and liabilities), knows the intricacies of death duty valuation coupled with the Estate Duty Office practice. . . . Furthermore, he is an expert on investment matters and can produce the maximum of income without sacrificing any of the capital. Added to all this he must be a counsellor and guide. . . . To ensure that each trust is dealt with individually the trust corporations have an excellent system of book-keeping and accountancy. . . . A trust corporation is meticulous and expeditious in paying over moneys, whether capital or income, and rendering accounts. It is always available and cannot die. . . . But in spite of these advantages private trustees still administer very many more trusts both in number and value than do trust corporations. . . . For the chief reason we must perhaps look to that quality in our perfect trustee which we have not dealt with—the quality which is summed up in the phrase 'the personal touch'. . . . Trust corporations are fully alive to this and have been and are doing their utmost to ensure a personal service." Whether or not they succeed, it appears to be reasonably certain that there will always be scope for the individual trustee.

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The Law and Golf

MR. R. J. WHITE, the solicitor who has never lost a Walker Cup game, plays golf " just for fun " and is the only plus-two amateur golfer in Britain. According to the golf correspondent of *The Times* and all other credible witnesses, Britain went down fighting for the Walker Cup on Saturday, 12th May, and according to the same correspondent White's golf was " terrific," and " White and Carr beat those who were by common consent the two strongest golfers on the American side." This most competent judge concluded: " So he maintained his unbeaten record in the Walker Cup, five wins and one halved match. It is one to be very proud of, and he is a great golfer." The profession to which he belongs is likewise proud of his record and tenders him congratulations.

On Talking Too Much

AT the London (Criminal Courts) Solicitors' Association's dinner recently, Mr. Justice HUMPHREYS quoted: " Old gentlemen, as such, suffer from the habit of talking too much. Though they seldom make sense, their vogue is immense. It's the octogenarian touch." No one, not even a disappointed litigant, can accuse Mr. Justice Humphreys of talking too much. On the bench what he has to say is to the point, and, off the bench, his wit and wisdom are always well timed. If his is the octogenarian's touch, then it is a pity that more of our judges are not octogenarians, but, alas, there are much younger occupants of benches throughout the country who do in fact suffer from the habit of talking too much. To those who are in the habit of interjecting their wit and wisdom into the opening speeches of advocates, and drowning their cross-examination " in fifty different sharps and flats," and even asking them to explain in front of the witness whither particular questions are leading, our older judges offer a salutary example.

Recent Decisions

In *R.* v. *Lumsden*, on 7th May (*The Times*, 8th May), CASSELS, BYRNE and STREATFEILD, JJ., held that, where police officers pursued and caught the appellant while he was running away from the open door of a building by night, the appellant was wrongly convicted of being found by night in a building with intent to steal, contrary to s. 28 of the Larceny Act, 1916, as there was no evidence of his having been found in the building.

In *Maher* v. *Maher*, on 7th May (*The Times*, 8th May), BARNARD, J., held that a marriage by an Englishwoman with an Egyptian of the Mohammedan faith was still valid and subsisting, notwithstanding that a registration of a declaration of divorce in Cairo by the respondent in the absence of the petitioner was in accordance with the Mohammedan religion and would be recognised as valid by Egyptian law. The ground for the decision was that the form of divorce in Egypt was appropriate to a state of the law which permitted polygamy, and was inappropriate to a monogamous marriage.

In *London Graving Dock Co., Ltd.* v. *Horton*, on 9th May (*The Times*, 10th May), the House of Lords (LORD PORTER, LORD NORMAND and LORD OAKSEY, LORD MACDERMOTT and LORD REID dissenting) held that the duty of an invitor as laid down in *Indermaur* v. *Dames* (1866), L.R. 1 C.P. 274, at p. 288, was not to prevent unusual danger, but to prevent damage from unusual danger, and either notice or knowledge might prevent such damage. A free and willing and unconstrained acceptance of the risk with full knowledge of its danger would also defeat the claim. It was held that the trial judge (LYNSKEY, J.) had evidence before him which entitled him to find that the plaintiff had full knowledge of the nature and extent of the risk, and therefore the appeal was allowed and the trial judge's decision restored.

In *Stevens* v. *Sedgman*, on 9th May (*The Times*, 10th May), the Court of Appeal (SOMERVELL, DENNING and BIRKETT, L.JJ.) held that certain land not exceeding five acres came within the definition of " agricultural holding " in s. 1 of the Agricultural Holdings Act, 1948, notwithstanding that it was also an allotment within s. 1 of the Allotments Act, 1925, and that therefore the tenant was entitled to twelve months' notice to quit expiring on the anniversary of the commencement of his tenancy, under the 1948 Act.

In *Crowther* v. *Crowther*, on 9th May (*The Times*, 10th May), the House of Lords (LORD PORTER, LORD NORMAND, LORD OAKSEY, LORD MACDERMOTT and LORD REID) held that, where a respondent to a divorce petition on the ground of desertion for at least three years was admitted to a mental hospital under a reception order and was detained there for some months during the three years' period, evidence alone could solve the question whether the respondent was capable of a continuing *animus deserendi*. The case was remitted in order that evidence should be called as to this.

In *Best* v. *Samuel Fox and Co., Ltd.*, on 10th May (*The Times*, 11th May), the Court of Appeal (LORD ASQUITH OF BISHOPSTONE and COHEN and BIRKETT, L.JJ.) held that a wife whose husband had become sexually impotent as a result of an accident, brought about by the negligence of the defendants, was not entitled to damages for loss of consortium, because the loss of one part of the consortium was not sufficient to constitute the cause of action. Cohen, L.J., doubted whether even proof of total loss of consortium would enable a wife to succeed where that loss was due to a negligent as distinct from a malicious act of the defendants. Lord Asquith said that he did not believe that a wife had such a cause of action, even where the loss of consortium was complete.

In *Bolton and Others* v. *Stone*, on 10th May (*The Times*, 11th May), the House of Lords (LORD PORTER, LORD NORMAND, LORD OAKSEY, LORD REID and LORD RADCLIFFE) held that, where a cricket pitch was protected by a fence 7 feet high, the top of the fence being 17 feet above the level of the cricket pitch, and a ball was very rarely hit over the fence in a match, and a ball hit exceptionally far struck and injured the plaintiff while standing on the highway outside her house, the trustees of the field who were in control of it were not liable to the plaintiff, because a reasonable man would not have anticipated that injury would be likely to result from cricket being played in the field.

In a case in the Court of Appeal (DENNING and HODSON, L.JJ., and LLOYD-JACOB, J.), on 11th May (*The Times*, 12th May), it was held that where a sub-tenant of the whole of a house let to him furnished obtained security of tenure from a rent tribunal under s. 11 of the Landlord and Tenant (Rent Control) Act, 1949, the effect was not to extend the contractual sub-tenancy but only to give the sub-tenant a statutory security of tenure. Therefore, where the tenant had given his sub-tenant of the furnished house notice to quit, the landlord was not entitled to an order for possession on the ground that the whole house was sub-let furnished, as the sub-tenant after the expiry of the notice had no sub-letting, but only a statutory security of tenure.

Taxation

FINANCE BILL, 1951—I

Rates of Income Tax, Reliefs and Allowances

THE standard rate of income tax for the year 1951–52 is increased from 9s. to 9s. 6d. in the £. In order that the total of income tax and sur-tax on the highest range of income shall not exceed 19s. 6d. in the £, sur-tax on the excess of an individual's income above £20,000 a year is reduced for the same year from 10s. 6d. to 10s. in the £. The figure at which the highest rate of sur-tax begins is now £15,000 a year.

The reduced rates of income tax are to be 3s. 6d. in the £ (against 3s.) on the first £50 of taxable income and 5s. 6d. (against 5s.) on the next £200.

The married man's personal allowance is increased from £180 to £190. The child allowance is to become £70 for each child instead of £60, and the child's income limit for the purpose of the allowance is similarly increased to £70. While the increase in the child allowance is readily understandable, it is perhaps surprising that the married man is to get increased relief whether or not he has the responsibility of children. The position of married couples who are both earning and whose joint income does not exceed £2,000 a year becomes still more favourable than that of two single individuals.

The income limit of a dependent relative, for the purpose of an individual's claim to dependent relative allowance, is increased from £70 to £80, doubtless in order to keep in line with the increased old age pension. The allowance is reduced by the amount of any excess of the relative's income over £80 a year. No allowance is given if the relative's income exceeds £130.

Initial allowances in respect of industrial buildings, machinery and plant, and mines and oil wells, are to be suspended in relation to capital expenditure incurred on or after 6th April, 1952. Expenditure up to that date continues to qualify. Owing to the fact that a continuing business is assessed on the amount of its profits of the preceding year, allowances for expenditure incurred between now and April, 1952, will usually be given in the year 1952–53, and sometimes even in the year 1953–54, depending on the date when the trader's accounting year ends. Accordingly this loss of tax relief will not be felt for some considerable time. The purpose of the suspension appears to be, not so much to raise revenue, as to discourage capital expenditure.

The initial allowances will be suspended in relation to agricultural machinery and plant, like any other machinery and plant. But the ten annual allowances of 10 per cent. each in respect of capital expenditure incurred on agricultural constructional work continue unaffected.

New Sources of Income

Income arising under Case III of Sched. D (interest, annuities, etc.) and Cases IV and V (income from foreign securities and possessions) was usually chargeable to income tax on the basis of the amount arising (or sometimes under Cases IV and V, on the amount remitted to this country) in the year preceding the year of assessment. Exceptionally, in the case of a source of income acquired " in any year of assessment," tax was to be charged for the year in which the income first arose and for the following year on the actual amount arising within each of those two years. There were also special rules as to a source which the taxpayer ceased to possess. In the recent case of *Goodlass Wall and Lead Industries, Ltd.* v. *Atkinson* [1950] 2 All E.R. 314, the taxpayer company had acquired foreign shares in 1937. No dividend was paid on those shares until January, 1943. The question for the court was whether the shares were to be treated as a newly acquired source of income, so that the dividend would fall for assessment in the year of receipt, 1942–43, or whether the assessment was to be made in the following year on the preceding year basis. The House of Lords held that the source was not to be treated as newly acquired, since the source was not acquired in the year in which the income fell to be taxed. Accordingly the dividend was assessable in the year following that of its receipt. Clause 17 of the Finance Bill is intended to nullify that decision, by providing, in effect, that a source is to be deemed to be newly acquired in the year in which income therefrom first arises. The clause is to apply to Cases III, IV and V of Sched. D.

Building Societies

By extra-statutory arrangements made with the Commissioners of Inland Revenue, building societies are not chargeable to income tax at the standard rate on their income, but at a reduced rate calculated according to the size of their various shareholdings and deposits. Dividends and interest due from a society to its members and depositors are paid in full without deduction of tax; the recipient is not assessable to income tax in respect thereof, nor can he make a tax repayment claim. For the purpose of determining whether any annual payment made by a shareholder or depositor was made out of profits or gains brought into charge to tax, building society dividends and interest are regarded as taxed income. The actual amounts of dividends and interest paid, and not any gross equivalent thereof, are treated as forming part of the recipient's total income for income tax and sur-tax purposes. Interest due from a borrower to a building society is payable in full without deduction of income tax, and the amount so paid is set in reduction of the borrower's Sched. A assessment.

The Finance Bill is to give statutory force to the above matters, when an arrangement to that effect is made between any society and the Commissioners of Inland Revenue, for the year 1952–53 onwards. One major amendment is to be made. For the year 1952–53 onwards, for sur-tax purposes, the amount paid or credited to a shareholder or depositor is to be deemed a net amount corresponding to a gross amount from which income tax at the standard rate has been deducted. This means that sur-tax payers in receipt of dividends or interest from a building society will lose the substantial benefit they have hitherto enjoyed of including in their total income for sur-tax purposes only the actual amount received. It remains to be seen whether this provision will set in motion any flight of money from the building societies. It is to be observed that for purposes other than sur-tax, it is the net amount received, and not the gross equivalent, which is deemed income of the recipient.

Miscellaneous Income Tax Matters

The accountability of an agent in this country for tax on foreign income passing through his hands from any " foreign or colonial company, society, adventure or concern " is to be extended to income from " any body of persons not resident in the United Kingdom " (cl. 18).

Bounty payable to a member of the armed forces voluntarily undertaking to serve for a further period, and to Class Z and other reservists called up for not more than fifteen days is to be exempt from income tax (cl. 20).

Returns can be demanded of interest paid or credited without deduction of income tax by any bank, the Post Office Savings Bank or any trader, except of interest not exceeding

£15 in the year in the case of any one person. This applies only to interest paid or credited after 6th April, 1950 (cl. 23).

The exemption from income tax of the staffs of High Commissioners, etc., is not to extend to persons employed in business (cl. 35).

PROFITS TAX

Profits tax has hitherto been chargeable on the profits of bodies corporate at 30 per cent., with non-distribution relief at 20 per cent. In effect, therefore, profits tax on distributed profits was 30 per cent. and on undistributed profits 10 per cent. The 30 per cent. rate is to be raised to 50 per cent. as from 1st January, 1951. This is not so heavy an impost as at first appears, because profits tax is a deduction in computing the profits of a company for assessment to income tax. The effective rate is nearer one-half of 50 per cent. Profits tax on undistributed profits remains at 10 per cent.

In computing the profits of a company in which the directors have a controlling interest, a restriction has always been placed on the amount which could be deducted on account of remuneration of directors. Without such a restriction, it is probable that nearly all distributions would have taken the form of directors' remuneration. The restriction did not apply to whole-time service directors. A whole-time service director was one who was required to devote substantially the whole of his time to the service of the company in a managerial or technical capacity, and who was not the beneficial owner of more than 5 per cent. of the ordinary share capital of the company. The remuneration of such a whole-time service director was treated on the same footing as the remuneration of an employee, being deductible in full. The maximum amount deductible in respect of the remuneration of directors who were not whole-time service directors was the sum of £2,500 or 15 per cent. of the profits, whichever was greater, but not in any case exceeding £15,000. That limit applied however many or few the directors were.

It has apparently been realised that the limit may be too low where there are two or more directors who are not whole-time service directors. An amendment is made by cl. 26 of the Bill. The broad effect of the amendment is to increase the figure of £2,500 to £3,500 when there are two such directors and to £4,500 when there are more than two such directors. There are, however, certain conditions to be fulfilled if this increase is to apply. First, the only directors in respect of whom the increased amount can be claimed are those who are required to devote substantially the whole of their time to the service of the company in a managerial or technical capacity and who are not whole-time service directors. This means that a director qualifies only if he would rank as a whole-time service director but for the fact that he is the beneficial owner of more than 5 per cent. of the ordinary share capital of the company. If the aggregate remuneration of such directors does not exceed £2,500, then the amount deductible is not affected by the amendments contained in the Bill.

Secondly, in computing the amount of directors' remuneration deductible, the remuneration of any one director in excess of £2,500 is to be left out of account, for the purpose of claiming the increased amount.

Thirdly, in claiming deduction of £4,500 in respect of three or more qualifying directors, the additional £1,000 (from £3,500 to £4,500) is considered as relating to the remuneration of the extra directors above two. For this purpose the extra directors are regarded as being those whose remuneration is the smallest, and the increase is limited to the aggregate of their remuneration, as well as being limited to £1,000.

Profits tax is to be charged on public utility undertakers (cl. 25).

The time limit for proceedings for penalties in connection with profits tax and excess profits tax is extended to three years from the final determination of the amount of tax chargeable (cl. 34).

The next two articles will deal with sections designed to prevent the removal of enterprises to places abroad, to check avoidance of income tax and profits tax by sales between associated concerns, avoidance of profits tax by transactions of which the main purpose or main effect is avoidance, and avoidance of profits tax by capitalisation of profits. Amendments of the law relating to estate duty will also be dealt with.

C. N. B.

Costs

APPEALS—X

IT is necessary, in an appeal to the Judicial Committee of the Privy Council, as we have stated before, for the documents for use in the appeal to be printed, and so also must be the cases of the respective parties. When they are printed, the whole of the documents and the cases will be bound up into a volume, the size and the binding of which are regulated by the Rules of the Judicial Committee. Seven copies of the bound record and cases must be lodged with the registrar of the Privy Council.

The copies for binding for the use of the Privy Council will be obtained from the Privy Council Office and a fee of 10s. will be allowed to the appellant's solicitor for the attendance to obtain these copies, and an equal fee may be charged by the solicitor for drawing the instructions to the binder, and again for attending on him with the copies and the instructions. Fees of 10s. may also be charged for attending on the binder and paying his account and for attending at the Privy Council Office to lodge the bound copies.

It will be noticed that in theory only the copies for use by the Privy Council are bound, but in practice sufficient copies are bound for the use of the appellant's and also the respondent's counsel. The whole of the binder's bill, however, will be included in the appellant's costs, and no such item will be charged in the respondent's solicitor's bill of costs.

The stage has now been reached when counsel is instructed to argue the appeal before the Judicial Committee. As in the House of Lords, there is no brief in the ordinary sense, for the printed copy of the record and cases will constitute counsel's brief. Be that as it may, two fees of £1 each are allowed to the solicitor as instructions to senior and junior counsel to argue the case. This will cover the drawing and copying of any note that the instructing solicitor may wish to send to counsel. The charge which the solicitor may make for attending on each counsel with the brief and record will depend on the amount of counsel's brief fee. Where the fee is under 30 guineas then the solicitor's charge for attending counsel will be 10s. whilst if the amount of counsel's brief fee is 30 guineas or more then the solicitor's charge will be £1. So far as counsel's fees are concerned, it should be noticed that not more than two counsel are normally allowed, and the junior counsel's fee will always be two-thirds of the senior counsel's fee. It may be that Colonial counsel will come over to conduct the appeal themselves, or to oppose it, and

in this case they will be allowed the same fees as English counsel. No travelling expenses, however, will be permitted in a bill of costs to be recovered from the other side. As we have noticed before, the clerk's fee is 5 per cent. of the amount of the counsel's fee, and in this respect it will be observed that the 5 per cent. is calculated on the actual amount of the counsel's fee; thus on a fee of 45 guineas the clerk's fee is £2 7s. 6d. In the High Court, the clerk's fee of 2½ per cent. of the counsel's fee is calculated on the amount of the fee in guineas as if they were pounds, so that counsel's clerk's fee on a fee of 75 guineas is £1 17s. 6d. This is a small point of distinction which sometimes causes confusion.

A consultation with counsel is allowed on the brief, but normally only one. Counsel's fee for this is 5 guineas, both for senior and junior counsel, and the solicitor may charge two fees of 10s. for the attendance on each counsel to appoint the consultation, as well as a fee of £1 for attending the consultation.

The day appointed for the hearing is notified to the parties by the registrar by way of summons, and a copy of the summons will be made for counsel, the charge allowed for which is 2s. 6d. each, whilst a fee of 10s. each is allowed for attending on the counsel with the copy summons. For each day during which the appeal is in the paper but is not reached, the solicitor may charge a fee of £2 6s. 8d., whilst for each day during which the appeal is heard he will be allowed a fee of £3 6s. 8d. Counsel are entitled to refresher fees for every day on which the appeal is in the paper, irrespective of the time occupied during the day. Refresher fees are limited to 10 guineas a day. It should be noticed that this is the maximum, and will be chargeable by each counsel, whether senior or junior. This, it will be remembered, differs from refresher fees in the House of Lords, for in the latter case the senior is entitled to a maximum fee of 10 guineas, whilst the junior will receive a maximum of three-fifths of that amount.

As in the House of Lords, judgment is not delivered immediately at the conclusion of the appeal, and the day on which judgment is to be delivered is notified to the parties by the registrar by summons. Unless their lordships intimate that they desire both counsel to be present when judgment is delivered, or it is intended to raise some point of importance when the judgment is delivered, only junior counsel's attendance will be permitted, and the fee allowed to him for the attendance is 5 guineas (clerk's fee 10s. 6d.). The instructing solicitor will be entitled to charge a fee of 2s. 6d. for making a copy for counsel of the summons to hear judgment and 10s. for attending him therewith. The solicitor's fee for attending to hear the judgment is £1 6s. 8d.

That concludes the appellant's costs, so far as the actual hearing of the appeal is concerned. If the appeal succeeds and the appellant is awarded the costs, then he will in due time receive from the registrar an order to tax his costs and the order will state the day and time appointed for the taxation. Not less than forty-eight hours before the time appointed for the taxation, the successful party will lodge his bill of costs in the Privy Council Office, together with the documents and vouchers in support thereof. In this connection, it is perhaps not inappropriate to remind ourselves that, where Colonial counsel have been engaged in the appeal, a receipt for the amount of their fees should be obtained before they return to the colony, for otherwise the taxation of the costs will be delayed.

The bills of costs for taxation in the Privy Council Office will be drawn in ordinary High Court form, that is to say they will be typed or written on foolscap paper having two cash columns on the right-hand side and one on the left. The inner right-hand column is for disbursements and the outer column is for the profit charges. The left-hand column is, of course, for the items taxed off.

In a party and party taxation the bill of costs will follow the form and contain the items set out in this and the preceding articles, and nothing is allowed for correspondence between the English solicitor and the Colonial principal. If the circumstances of the case are such that the English solicitor desires to tax his costs against his Colonial principal on a solicitor and client basis, then he will have to obtain an order to tax, and to do this he must present a petition for that purpose.

Before dealing with the items relating to the taxation of costs in the Privy Council, it would perhaps be as well to draw attention to r. 78 of the Judicial Committee Rules, 1925, which states that if any party fails to lodge his bill of costs within the time limited by the preceding rule, namely, within forty-eight hours before the date appointed for the taxation, he may be deprived of the costs of "drawing his bill of costs and attending the taxation." It is a matter of passing interest to note that the precise wording of the rule, whilst it deprives the solicitor in certain circumstances of the costs of drawing the bill, says nothing about copying the bill, and it would, therefore, appear that even if he has failed to lodge his bill of costs in due time he will still be entitled to the charges for copying the bill for the other side and also for the taxing officer, although he will not be entitled to anything for drawing the bill. It may, of course, be that the omission was due to oversight, although that is improbable.

The actual charges for drawing the bill of costs and copying are 1s. per folio for the former, and 6d. per folio for the latter, and two copies will be required, one for the taxing officer and one for the other side. Two fees of 10s. each will be allowed for attending to lodge the bill and documents in support, and also for the attendance on the other side to serve them with a copy of the bill. At the same time as a copy of the bill is served on the other side they are also served with a copy of the order to tax, and for making such copy a fee of 5s. is allowed. The fee for attending to tax the costs is £2 2s.

After the bill is taxed the total is agreed with the taxing officer's assistant, and the amount is inserted in the draft of the King's Order. A fee of 10s. is allowed to the solicitor for perusing and approving the draft of the order, and a further fee of the same amount for writing to the Colonial principal with the King's Order.

As in the House of Lords a sessions fee of £3 3s. is allowed, but in the case of Privy Council appeals the sessions fee is allowed for each year or part of a year which has elapsed since the appearance was entered. In addition a charge for letters and petties is allowed. This charge is fixed at £2 2s. for the first year and £1 1s. for each subsequent year. As stated earlier, the profit charges in the bill of costs may be increased by 50 per cent.

That must conclude our examination of the appellant's costs in connection with Privy Council appeals, and we must leave until our next article a consideration of the respondent's costs in relation to such appeals.

J. L. R. R.

Mr. J. C. St. L. STALLWOOD, solicitor, of John Street, Bedford Row, London, W.C.1, has been elected a Freeman of the City of London.

Mr. EDWIN CUST, assistant deputy Town Clerk of Gloucester, has been appointed assistant solicitor to the Southport Corporation.

A Conveyancer's Diary

TRUSTS FOR THE RELIEF OF OLD AGE

THE first of the objects enumerated in the preamble to the statute 43 Eliz. c. 4 (the Charitable Uses Act, 1601) as good charitable objects is " the relief of aged, impotent and poor people." Are these words " aged, impotent and poor " to be construed disjunctively, so as to comprehend a trust for the relief of aged or impotent people who may not necessarily be also poor; or must the words be read conjunctively, so as to make poverty an essential quality in the objects of any trust which it is sought to bring within this part of the preamble to the statute? According to three recent decisions the former is the correct method of construction, but the problem has a history, and a glance at some of the earlier cases on the point will, at the very least, implant some doubt in the reader's mind concerning the correctness—or at any rate the adequacy—of these recent decisions.

The first of the recent cases was *Re Glyn* (1950), 66 T.L.R. (Pt. 2) 510. In that case a testator left her residuary estate upon trust for the purpose of building and endowing free cottages for old women of the working classes of the age of sixty or upwards. It was argued on behalf of those interested to defeat this trust that since certain *dicta* of Denning, J. (as he then was), in *Green* v. *Minister of Health* [1947] 2 All E.R. 469 (and, one may perhaps add, s. 1 of the Housing Act, 1949) there was no implication of poverty in the reference to working classes in this trust, and as the trust on this footing was not a trust for the relief of poverty, it was not a good charitable trust. Danckwerts, J., made short work of this argument. In his view the relevant words in the preamble to the Elizabethan statute were to be construed disjunctively; it had never been suggested that poor people had also to be aged to be objects of charity, in the legal sense, and there was therefore no ground for supposing that aged people had also to be poor to come within the preamble.

Stopping at this point, this appears to be a clear victory for the disjunctive school; but the learned judge did not stop there. He went on to say that, notwithstanding the *dicta* in *Green's* case, there was a context in the case before him to show that the trust had been intended to benefit indigent persons. Two points should be noted in connection with this case. First, the actual decision can be supported as one upholding as a good charitable trust a trust for the relief of poverty (the charitable quality of which is, of course, beyond all dispute). Secondly, the reports do not show what, if any, authorities were cited in argument before the learned judge. From these the conclusion might be drawn that had this decision stood alone, it would not, for these reasons, have possessed much value as a guide in future cases.

But this decision did not stand alone for long. In *Re Bradbury* [1950] W.N. 558, a testatrix left her residue to be invested as a fund for the aged and directed the payment thereout of sums for the maintenance of an aged person or aged persons in a nursing home. *Re Glyn* was mentioned in argument, and Vaisey, J., expressed surprise at the disjunctive construction which in that case Danckwerts, J., had adopted (if that is the right word to use in reference to observations which, on one view of the decision, were *obiter*); but he followed that decision and upheld the validity of the trust in the case before him. It is quite clear from the judgment in *Re Bradbury* that the trust was construed and treated as a trust for the relief of the aged simply, with no question of poverty as an additional qualification (" aged persons in a nursing home may not be in the least in need of any sort of pecuniary assistance ").

The last of the recent cases on this point was *Re Robinson* [1950] 2 All E.R. 1148, in which a testator left half his residuary estate to the old people over sixty-five of H, to be given as his trustees should think best. Vaisey, J., construed this gift as a gift to the old people of H as a class, qualified not by poverty, sickness or impotence, but by age, and he followed the decision in *Re Glyn* and his own decision in *Re Bradbury* in holding the gift to be a good charitable gift.

In none of the judgments in these three cases, as reported in the reports I have seen, is there a single reference to any of the earlier authorities on the cardinal question which arose for decision, viz., whether the disjunctive or the conjunctive is the proper method of construction to apply to the words " the relief of aged, impotent and poor people " in the preamble to the Elizabethan statute. But the report of *Re Robinson* in the All England Reports shows that *Re Lucas* [1922] 2 Ch. 52, was referred to in argument in that case. It may also be observed, before we pass on to some of those earlier authorities, that a note on the recent decisions in the *Law Quarterly Review* for April (pp. 664-6) in which it is suggested that " an attractive essay might be written upon the rich as objects of charity," also states that while the decision in *Re Glyn* may be supported upon the implicit element of poverty, the other two cases are not " very near the line " (*Re Bradbury*), but fairly on the wrong side of it. This comment would have carried more weight if it had contained a hint that the trend of authority, as well as general considerations, did not support the construction which was adopted, without reference to authority, in the recent cases.

I have already said that counsel in *Re Robinson* referred to *Re Lucas*, and the last-mentioned of these cases contains a judgment in which a considerable number of earlier decisions are reviewed and analysed. These start with *Attorney-General* v. *Comber* (1824), 2 S. & S. 93, in which Leach, V.-C., upheld a bequest for the widows and orphans of L as a good charitable bequest on the ground that it was a bequest in relief of poverty (" I must act upon this bequest as if the expression had been to the *poor* widows and orphans of L "). A similar gift came under consideration in *Thompson* v. *Corby* (1860), 27 Beav. 649. In that case Romilly, M.R., would have been inclined, if the matter had rested on the Elizabethan statute alone, to think that the word " aged " alone was sufficient to create a charitable bequest, but he felt bound to follow *Comber's* case in construing the gift before him as a gift for the destitute. This line of reasoning was then followed in *Re Dudgeon* (1896), 74 L.T. 613, *Re Elliott* (1910), 102 L.T. 528 (a decision of Parker, J., as he then was), and finally *Re Lucas*. *Re Wall* (1889), 42 Ch. D. 510, is sometimes referred to as an authority for the contrary view, i.e., that adopted by Danckwerts and Vaisey, JJ., in the recent cases (see, e.g., Tudor on Charities, 5th ed., p. 43), but that is a borderline case. In that case Kay, J., commenced his judgment with the expression of opinion that " looking at the words of the statute, which expressly mentions aged people, I do not see how I can avoid the conclusion that this is a charitable gift " (42 Ch. D. 511); but on *ibid.*, p. 512, the learned judge went on to say that " there is enough in this will to indicate that the objects of the gift are aged persons . . . and in dealing with such a trust I conceive the duty of the trustees would be to give the benefit of it to the deserving of the class . . . and I cannot help thinking that the true construction of these words must be that poor members . . . are intended to be benefited." Like *Re Glyn*, therefore, *Re Wall*

may be regarded as a decision on poverty, and not on old age, and thus for the purposes of the present problem a neutral decision.

The result of the authorities up to and including *Re Lucas* is summed up in Tudor, p. 43, as follows: "Although the relief of aged, impotent and poor people is mentioned in the preamble, it is doubtful whether gifts for the aged simply are charitable. But the court will be inclined, if possible, to read into the gift the intention to benefit persons who are both aged and poor, in which case, of course, there is a charitable trust." Let us leave it at that, and put a reference to this passage against the reports of the three recent cases.

"A B C"

Landlord and Tenant Notebook

OVERLAPPING BUSINESSES

REPORTS of litigation concerning the scope or effect of a covenant not to carry on a specified business on demised premises, or of a covenant to limit their use to one particular business, are far less frequent than they used to be; and that of *Hartshorn* v. *Angliss*, reported at p. 318, *post*, came as a reminder that despite the guidance afforded by the numerous authorities—which no doubt accounts for the decrease in output—disputes may still arise.

The question in this case was whether a tenant, who had covenanted not without the previous consent in writing of his landlord to carry on on the demised premises any business other than that of a butcher, had broken that covenant by selling poultry. The scope of the business specified in the covenant was examined in rather a different connection long ago, in *Doe d. Gaskell* v. *Spry* (1818), 1 B. & Ald. 617, in which it was held that a covenant *not* to exercise the trade of a butcher on the premises was broken by the sale by retail of raw meat "although no beasts were there slaughtered." One can be a butcher though one does not engage in butchery; it may be that the common use of the latter term in a pejorative sense, rather than knowledge of the decision in *Doe d. Gaskell* v. *Spry*, explains why many who profess the calling describe themselves as "purveyors of meat." No corresponding custom is observed by the baker or the candlestickmaker.

But the problem which presented itself in *Hartshorn* v. *Angliss* was more closely akin to that dealt with in *Stuart* v. *Diplock* (1889), 43 Ch. D. 343, and, indeed, dealt with with thoroughness and at length, though eventually it resolved itself into a simple exercise in almost elementary logic. The action was in fact between tenants who held adjoining shops of the same landlords and the covenant was a landlord's covenant in the plaintiff's lease of which, however, the defendant had had due notice. The covenant was not to permit or suffer to be carried on on the adjoining premises, etc., "the trades or businesses of ladies' outfitting, juvenile outfitting, or sale of baby linen, nor give their consent," etc. The plaintiff made her case by proving that the defendants, whose lease described them as "fancy drapers and hosiers," sold underwear (they managed to list six varieties, dividing the garments by reference to function and to constitution) and adducing evidence that the business of ladies' outfitting consisted in the sale of such articles of attire.

At first instance, Kekewich, J., reasoned that as the sale of the articles specified was an essential part of the business of an outfitter the defendants were carrying on the business of outfitters. On appeal, their counsel fairly put his finger on the fallacy which underlay this reasoning; in effect, he pointed out, the learned judge had said, "All ladies' outfitters sell combinations; the defendants sell combinations; therefore the defendants are ladies' outfitters." Respondent's counsel frequently had to deal with awkward questions put to him by members of the court, such as "Is a hosier carrying on the business of a ladies' outfitter because he sells some things which ladies' outfitters sell?" or "Can you under a covenant that the business of a tobacconist be not carried on prevent a tavern keeper from selling cigars to customers?" and in the end the court held that the covenant before it did not oblige the covenantor not to carry on any part of the business of an outfitter. If, Cotton, L.J., put it, the sale of corsets were an important part of the business of a ladies' outfitter, it could not be contended that a person who sold corsets, and nothing else, was to be considered a ladies' outfitter. The businesses of a ladies' outfitter and that of a hosier overlapped, said Bowen, L.J., having four classes of articles the sale of which was common to them both; but a covenant not to carry on the business of a ladies' outfitter was not broken by carrying on part of that business.

Hartshorn v. *Angliss* was not exactly on all fours with *Stuart* v. *Diplock*, but it may be said that, just as the plaintiff in the older case achieved initial success largely by calling the defendants outfitters, so the covenantee in the recent case sought to establish a breach by calling his tenant a poulterer. And Vaisey, J., dealt with the matter in much the same way as the Court of Appeal had disposed of the point raised in *Stuart* v. *Diplock*: was the sale of poultry by the tenant part of the business of a butcher, or was it another business activity—namely, that of a poulterer—carried on by a butcher? The learned judge accepted evidence which showed that it was an understood thing that a butcher sold poultry, and he was satisfied that a butcher was almost universally to be found selling poultry as part of and incidental to his business.

It so happens that on the same day as this decision (27th April) resort was had to a dictionary in another case (*F.* v. *F.*, now reported 95 SOL. J. 287) in order to determine the meaning of a word (in that case the word "continuously," which occurs in the Matrimonial Causes Act, 1950, s. 1 (1) (*d*), making five years' continuous care and treatment for mental disease part of the ground for a petition). The tenant in *Hartshorn* v. *Angliss* relied rather on expert evidence, perhaps both of shopkeepers and of customers; if the N.E.D. had been consulted, it would have been found that "butcher" literally meant a dealer in goat's flesh, but covers "one whose trade it is to slaughter large tame animals for food; one who kills *such* animals and sells their flesh; now, occasionally, a tradesman who deals in meat" (cf. *Doe* v. *Spry*, *supra*). The N.E.D. does not say that the meat must be that of large tame animals, but when it comes to "butcher's meat" it specifically defines that expression as meaning "meat sold by butchers, as opposed to poultry, etc." So on purist lines it would have been possible for the landlord to put forward a fairly strong case, possibly making a concession in favour of rabbits and hares, but urging that the line ought to be drawn somewhere, that a butcher had no business to sell anything but mammals and that feathered bipeds were beyond his

functions. I do not, however, suggest that the view taken and construction placed upon the covenant were not correct in the circumstances; it seems, as the judge put it, that the business of a butcher nowadays includes the sale of poultry. Incidentally, I wonder whether any tenants bound by covenants to limit their business activities to those of a fishmonger have been taxed with breaking those covenants by selling whalemeat. The Ministry of Food appears to have brushed aside zoological considerations when allocating this foodstuff to fishmongers, and to have been guided by the same reasoning as that which underlay the customer's request of "the head for her cat."

R. B.

HERE AND THERE

DRAWING THE LINE

FOR holiday reading over the Whitsun Vacation (if you must read shop) you have the usual end of term hatching out of reserved judgments. To this the House of Lords has contributed handsomely, devoting three consecutive mornings last week to the delivery of their lordships' considered opinion in six cases, three of them of more than ordinary interest, illuminating respectively the law of invitor and invitee (*London Graving Dock Co.* v. *Horton*), the effect of supervening insanity on desertion (*Crowther* v. *Crowther*), and the law of cricket balls (*Bolton* v. *Stone*). This not very technical little department has no intention of usurping the functions of the talented gentlemen who supply the Notes of Cases on another page but, just as a matter of stop-press news and in case you haven't read your *Times*, you may like to know what happened. *Crowther* v. *Crowther:* Even though a deserting spouse may be admitted to a mental home during the three-year qualifying period for divorce, it is still open to the deserted spouse to prove (if the evidence is available) that he or she still retained mental capacity enough to continue the *animus deserendi*. *London Graving Dock Co.* v. *Horton:* The invitee lost, his legal position being distinguished from that of an employee. *Bolton* v. *Stone:* The cricket club won. The two latter cases and, indeed, another of this batch of decisions, *Harrison* v. *National Coal Board* (where a coal face worker was held not entitled to recover from the Board in respect of a shot-firer's negligence), all seem to mark a reaction against a tendency which has been causing some alarm among reflective practitioners—the growing assumption that if somebody has been injured somebody else has got to pay. The hard cases were beginning to make some rather bad patches in the law; the boundaries marked out by the old principles were becoming overgrown, but the line is being drawn again; the boundary stones are being repainted. The impulse to compensate the unfortunate is, of course, highly creditable, and the late Judge Turner of Westminster once went to the heart of the matter very shrewdly. A jury more sympathetic than analytical had returned the following verdict in an accident case: "We don't think the defendant was negligent, but we think the plaintiff ought to have £16 damages." "Very well, gentlemen," said Turner, "that will be £2 from each of you."

THE BIG HIT

SATURDAY, 9th August, 1947, will be for ever a memorable date in the history of cricket. Denton St. Lawrence were the visiting team at the Cheetham Cricket Ground in Manchester, and they were in. It was about three o'clock on a hot drowsy afternoon and Mr. Walter Leadbeater (a Yorkshireman, strangely enough in a Lancastrian team) was facing a slow left-arm bowler. The first ball he hit to the boundary. A catch—yes—no—dropped—six on the score board. A couple of balls later Mr. Leadbeater hit the sight screen, but the big moment was yet to come. "It was a lovely half-volley. It came slowly through the air and sat up and begged to be hit. I hit it. It went straight over the bowler's head and vanished over the fence"—over the road, through the assize court, through the Court of Appeal and finally to rest in the House of Lords. On the other side of the fence and just over the road fifty-two year old Miss Bessie Stone was standing with one foot on her garden step and one on the pavement when the bat-propelled thunderbolt struck her with predestined precision on the head. It was to be over three and a half years before that ball was neatly fielded by five noble and learned law lords and tidied away into its proper place in the majestic scheme of our jurisprudence. The whole cricketing world owes a deep debt of gratitude to Miss Stone for the series of very sporting matches she has given the Cheetham Cricket Club on such unfamiliar grounds—test matches in the fullest sense of the word. Batsmen henceforth may strike a ball into the air, which falls to earth they know not where, nor need they bother to find out, provided they are in a position to establish the extreme improbability of its leaving their club premises and, should that occur, the yet more extreme improbability of its actually hitting someone. I suppose the same principles would apply to toxophily and other sportively propelled missiles. How can the sporting world discharge its debt of gratitude to Miss Stone? Perhaps they might stage a benefit match at the Cheetham Cricket Ground to raise funds to pay her costs and the damages of which she has been deprived. It would be cricket, wouldn't it, in the deep moral sense? All the same, after her experience of the mighty men at the wicket she might be a little shy of coming so close within the line of fire as actually to attend. Supposing she was hit and the whole thing started again? Incidentally I've never quite understood why she didn't join as parties to the action the batsman, the bowler and the man who dropped that catch.

DARKNESS AT NOON

ON two of the three mornings on which the House of Lords was casting light on the dark places of the law the lights suddenly went out. In accordance with the prevailing taste for equality, the Legislature has apparently put itself on the mains and shares with the common man the common risk of incarceration in immobilised lifts, time arrested on electric clocks and darkness at noon. Without, the lowering grey skies of a typical English May morning ensured that the Chamber was plunged into semi-darkness on the first occasion and almost total obscurity on the second. Candles were brought in, not, alas, in the fine ceremonial candelabra of some Georgian revel ("the gay and festive scene, the halls of dazzling light"), but in brass bedroom candlesticks such as used to light us to rest in our childhood's excursions to remoter country houses. Auxiliary candles were set about on improvised cardboard stands. There was a rather fine effect of chiaroscuro as the warm flickering light picked out a Law Lord's face leaning forward out of the darkness over his printed opinion.

RICHARD ROE.

The Minister of Fuel and Power has appointed Sir JOHN HOWARD, Sir SORTAIN MACKLIN, Mr. C. S. REWCASTLE, K.C., Mr. H. P. HOBBS, F.R.I.C.S., L.R.I.B.A., Mr. W. SHAPLAND COWPER, F.R.I.C.S., M.Inst.R.A., and Mr. W. T. BISHOP, F.R.I.C.S., to be members of the panel of referees for the purpose of reviewing determinations of District Valuation Boards.

Mr. G. M. NIGHTINGALE, assistant solicitor to the City of Exeter, has been appointed second assistant solicitor to Hastings County Borough Council.

Mr. ERIC SPENCER, assistant solicitor to the Lancaster Corporation, has been appointed assistant solicitor to Cheshire County Council.

REVIEWS

Rent and Mortgage Interest Restrictions. By The Editors of "Law Notes." Twenty-second Edition. 1951. London: "Law Notes" Publishing Offices. 32s. 6d. net.

The new, and bigger than ever, edition of this well known work is the first to cover the Landlord and Tenant (Rent Control) Act, 1949, discussed, in the usual section-by-section manner, in the text, the Landlord and Tenant (Rent Control) Regulations, 1949, and the Landlord and Tenant (Rent Control) (Amendment) Regulations, 1950 (the latter not mentioned in the "Contents"), being set out in Appendix II. The inevitable increase in bulk is not a ground for complaint. Practitioners will always be glad to be able to turn to this publication for its careful and thorough examination of the many problems raised by the legislation concerned. Indeed, it is not a bad idea to read the Introductory Sketch when confronted with some novel and puzzling point; and the way in which such matters as the meaning of "family" or the status of "built-in" furniture are discussed at length, but not at undue length, in the text, will assist many of us when called upon to argue the question of true intention. The occasional use of heavy type is perhaps too occasional, and one would have liked to be given the benefit of the Editors' opinion on the conflicting decisions on s. 11 (1) of the 1949 Act cited on p. 378, perhaps faintly indicated by the use of the word: "But . . ." These, however, are very minor criticisms; and if and when the Leasehold Property (Temporary Provisions) Bill or any part thereof becomes law, we shall look forward to a further edition, though the Introductory Sketch will then occupy some fifty pages.

A Simple Explanation of the Legal Aid Scheme. By DEREK H. HENE, M.A. (Cantab.), of the Inner Temple, and the South-Eastern Circuit, Barrister-at-Law, with a Foreword by the Rt. Hon. Sir NORMAN BIRKETT. 1951. London: London Express Newspapers, Ltd. 2s. net.

This journal has on more than one occasion stressed the fact that many people find it impossible or difficult adequately to complete the forms required to obtain legal aid, with the result that they have to seek professional assistance which they can ill afford and which many solicitors therefore feel morally obliged to give without fee. This little book is designed for such people and if it succeeds, as it should, in reducing the number of cases in which further assistance is needed, the *Daily Express* and Mr. Hene will have earned the gratitude of both the public and the profession.

The task of explaining legal technicalities to laymen is not simple and most of us are conspicuously unsuccessful at it when we try to do so in print—probably because of our fear of being caught out by our colleagues. Happily Mr. Hene appreciates the need for simplicity at almost any cost and has in consequence produced a book which comes as near as is humanly possible to justifying Lord Justice Birkett's tribute that readers are told what to do "in terms which nobody can misunderstand." Necessarily, there are many statements to which the purist might object, but rarely are the over-simplifications at all serious. Possibly Mr. Hene's explanation of desertion may lead his readers into supposing that everything depends on "who left whom" but it is difficult to avoid this without going into the intricacies of constructive desertion which would be likely to do more harm than good. The book contains a brief explanation of the scheme, followed by advice on completing the application forms, both generally and in connection with the most common types of action. Appended are a list of addresses of area and local committees, and references to the various official publications. Any applicant who studies it carefully in conjunction with the appropriate form should not only succeed in completing the latter but should also give the certifying committee the information which it needs.

One weakness, perhaps, is that Mr. Hene does not point out that aid will probably be refused if the action is one more properly brought in the county court rather than the High Court. This point seems worth emphasising and something might also be said about the limits of county court jurisdiction. Possibly, too, the treatment of emergency certificates might have been amplified, pointing out that an application for one will often be appropriate in the case of a defendant but rarely in the case of a plaintiff. Mr. Hene also seems to have something approaching an obsession about receipt stamps; he emphasises the need for the twopenny stamp so often that he may be in danger of leading an uninstructed reader into supposing that its absence is a fatal bar to success in any legal action. In general, however, his approach is exceptionally practical and well balanced.

Jordan's Company Law and Practice. Nineteenth Edition. By L. J. MORRIS SMITH, of Gray's Inn, Barrister-at-Law, and S. BOWIE, Solicitor. 1951. London: Jordan and Sons, Ltd. 30s. net.

The text of this book is arranged under alphabetically-ordered headings, a method designed no doubt to enable the book to be used conveniently as a reference book by persons concerned practically with matters of company law. Such a method of presentation necessarily involves quite a bit of duplication (the same information appearing under two or more headings) and (to avoid too much duplication) quite a bit of cross-referencing. Sometimes material appears in a strange place (see the last complete paragraph on p. 120), presumably for want of a more suitable heading.

The book is not fully up to date on matters of practice; in particular one might mention the procedure for the change of name of a company (p. 149) and the practice of the Registrar of Companies as to the filing by an exempt private company of copies of special or extraordinary resolutions for increase of capital (p. 90 and p. 123); the correct practice is referred to at 92 SOL. J. 725 and 92 SOL. J. 397, respectively. Another instance of failure to bring the book up to date is to be found by comparing p. 65 and p. 113 as regards the rate of interest under s. 323 of the Companies Act, 1948, when it will be seen that S.I. 1949 No. 423, lowering the rate of interest from 5 per cent. per annum to 4 per cent. per annum, is mentioned in the latter page but not the former. In dealing with preferential debts no reference is made to reg. 30 of S.I. 1950 No. 453 (as to P.A.Y.E.) or to s. 54 of the Finance Act, 1940 (as to s. 46, estate duty).

There is a good index, the inclusion of which suggests that the alphabetical presentation of the text is not fully satisfactory, although, of course, the index covers not only the text (about 240 pages) but the Act, the Winding-up Rules and the inevitable Comparative Tables of Sections (these together filling up about twice the number of pages as the text). The Companies (Forms) Order is not included.

Law of Property in Land. By H. GIBSON RIVINGTON, M.A., Solicitor. Fourth Edition. 1950. London: Law Notes Lending Library, Ltd. 30s. net.

This volume needs no recommendation to the student on the look out for a short and well arranged guide to the law of real property: the author's name and the publishers' imprint are a sufficient guarantee that the book has been written and published by persons with an unrivalled experience of the beginner's requirements. In his preface the author states that except for the addition of a short chapter on the Town and Country Planning Act, 1947 (written on non-controversial lines, and a welcome addition to the book), this edition shows no changes as compared with its predecessor, which has now been sold out; but in fact the few cases and enactments of importance since the publication of the last edition in 1947 have all been noted in their appropriate places. This edition is, therefore, as up to date as it can be made.

NOTES OF CASES

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

CUSTODY: EFFECT OF ORDER OF FOREIGN COURT

McKee *v.* McKee

Lord Merriman, Lord Simonds, Lord Morton of Henryton, Lord Radcliffe and Lord Tucker. 15th March, 1951

Appeal from the Supreme Court of Canada.

The appellant and the respondent, father and mother, were American citizens. Custody of the infant son of the marriage was, in 1942, awarded to the father in divorce proceedings in California. In 1945 that order was modified, the mother being given custody and the father a right of reasonable access to the child. The father having taken the child to Ontario without the mother's knowledge, habeas corpus proceedings were instituted there. Wells, J., having regard to the child's welfare, awarded custody to the father. The Court of Appeal for Ontario upheld that decision; the Supreme Court, by a majority of four to three, reversed it, and the father now appealed.

LORD SIMONDS, giving the judgment of the Board, said that Wells, J., who clearly had jurisdiction in such a case, had taken every relevant consideration into account. Giving the majority judgment of the Supreme Court, Cartwright, J., after reaffirming "the well-established general rule that in all questions relating to the custody of an infant the paramount consideration is the welfare of the infant," observed that no case had been referred to which established the proposition that, where the facts were such as he found them to exist in the case, a parent, by the simple expedient of taking the child with him across the border into Ontario for the sole purpose of avoiding obedience to the judgment of the court, became "entitled as of right to have the whole question retried in our courts and to have them reach a new and independent judgment as to what is best for the infant." And it was in effect because they held that the father had no such right that they allowed the appeal of the mother. But that was not the question which had to be determined. Once it was conceded that the court of Ontario had jurisdiction to entertain the question of custody and that it need not blindly follow an order made by a foreign court, the consequence could not be escaped that it must form an independent judgment on the question, though in doing so it would give proper weight to the foreign judgment. What was the proper weight would depend on the circumstances of each case. In the present case there was ample reason for the trial judge, first, to form the opinion that he should not take the drastic course of following the foreign judgment without independent inquiry and, secondly, to come to a different conclusion about what was for the infant's benefit, its welfare and happiness being, by the law of Ontario, as by that of England, and that of most of the United States of America, the paramount consideration in questions of custody. Comity demanded not the enforcement of a custody order by a foreign court—such an order had not the force of a judgment—but that it be given grave consideration. Their lordships advised that the father's appeal should be allowed.

APPEARANCES: *F. Gahan* and *G. H. Lochead* (Canadian Bar) (*Charles Russell & Co.*); *C. H. Gage* (*Hancock & Scott*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

TRADE MARK: INVENTED OR FANCY WORD

De Cordova and Others *v.* Vick Chemical Co.

Lord Simonds, Lord Morton of Henryton, Lord MacDermott, Lord Radcliffe and Sir John Beaumont
15th March, 1951

Appeal from the Court of Appeal for Jamaica.

The plaintiffs, Vick Chemical Co., registered in Jamaica in 1924 in class 3 a trade mark consisting of the words "Vicks VapoRub Salve," a device consisting of a triangle with the words "Vicks Chemical Company" printed on the sides, and other subsidiary words below the triangle. In 1941 they also registered in Jamaica in class 3 a trade mark consisting of the single word "VapoRub." Since 1942 the defendants, de Cordova and others, had imported from England and marketed in Jamaica a medicated ointment of the "vapour rub" type which bore on the jar, as a trade name, the words "Karsote Vapour Rub." In the action out of which this appeal arose the defendants claimed an injunction to restrain the plaintiffs from infringing the two trade marks and to restrain them from passing off goods not of the defendants' manufacture as and for the goods of the plaintiffs. The defendants contended that the word "VapoRub" was not capable of being registered in 1941 and ought to be expunged from the register; that, unless they could be found guilty of infringing the trade mark "Vicks VapoRub Salve," which, they said, they had never infringed, there was no case against them under the Jamaican Trade Marks Law, c. 272. Savary, J., held that the trade mark "VapoRub" should be expunged; that there had been no infringement of the other mark; and that there had been no passing off. The Court of Appeal for Jamaica allowed the plaintiffs' appeal and granted them the relief claimed. The defendants appealed.

LORD RADCLIFFE, delivering the judgment of the Board, said that the defendants, by marketing "Karsote Vapour Rub," had infringed the plaintiffs' trade mark "Vicks VapoRub Salve," for "VapoRub" was a fancy word which, on the evidence, had come to be used in the market as a distinctive name: it could not be ranked in the class of descriptive words such as "malted milk" or "shredded wheat"; and what was not merely descriptive by Jamaican usage was not altered in character by a different usage in the United Kingdom. As for the trade mark "VapoRub," that word, not having been registered under the special provisions of s. 8 (5) of the Trade Marks Law of Jamaica, could only be eligible for registration under s. 8 (3) as an "invented word," or under s. 8 (4) as a "word having no reference to the character of the goods." The plaintiffs did not challenge the decision of the courts in Jamaica that the word did not come within s. 8 (4). They (their lordships) agreed with those courts that it was not an invented word within s. 8 (3). In their opinion, however, the Court of Appeal had rightly held the trial judge to be in error in deciding that it was not open to him to overlook the defect in registration; and it had properly exercised its discretion in holding it reasonably certain that registration under s. 8 (5) would have been obtained in 1941, the relevant time. In their opinion, too, the defendants had been guilty of passing off. For all the accepted differences between the two causes of action, the significance of the word "VapoRub" in the Jamaican market was a dominating element in the consideration of either; and in their opinion its significance was such that the defendants did not effectively distinguish their goods from those of the plaintiffs by the use of the word "Karsote" or by the manner of the "get-up" of their jars. They would humbly advise that the appeal should be dismissed.

APPEARANCES: *G. R. Upjohn*, K.C., and *P. Stuart Bevan* (*McKenna & Co.*); *Norman Manley*, K.C., *G. W. Tookey*, K.C., and *R. A. B. Shaw* (*Neve, Beck & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

HOUSE OF LORDS

WORKMEN'S COMPENSATION: TRANSITIONAL PROVISIONS

Hales *v.* Bolton Leathers, Ltd.

Lord Simonds, Lord Normand, Lord Oaksey, Lord Morton of Henryton and Lord MacDermott. 1st March, 1951

Appeal from the Court of Appeal (94 SOL. J. 130; 66 T.L.R. (Pt. 1) 74).

The appellant, a leather worker, was, in November, 1947, certified to be suffering from dermatitis, produced by dust or liquids, and to be totally disabled from work. He returned to work later, but some months later again, on 14th August, 1948, he had a recurrence of the disease and was totally incapacitated until December, 1948. He did different, less well paid, work for a short time, and was then off work again until March, 1949. He received full workmen's compensation for the 1947 incapacity. In respect of his periods of incapacity in 1948 and 1949 he received injury benefit under the National Insurance (Industrial Injuries) Act, 1946. The appointed day for the coming into force of that Act was 5th July, 1948. All the recurrences of dermatitis were traceable to the original attack. The workman claimed, and the county court judge awarded, compensation for the periods for which he had received injury benefit. The employers' appeal was allowed, and the workman now appealed to the House of Lords. By s. 89 (1) of the National Insurance (Industrial Injuries) Act, 1946: "Workmen's compensation shall not be payable in respect of any employment on or after the appointed day, and accordingly the enactments set out in Sched. IX to this Act [including the Workmen's Compensation Act, 1925] are hereby repealed as from that day to the extent mentioned in the third column of that Schedule: Provided that (*a*) the said enactments shall

continue to apply to cases to which they would have applied if this Act had not been passed, being cases where a right to compensation arises or has arisen in respect of employment before the appointed day, except where, in the case of a disease or injury prescribed for the purposes of Pt. IV of this Act, the right does not arise before the appointed day and the workman, before it does arise, has been insured under this Act against that disease or injury. . . ." The House took time for consideration.

LORD SIMONDS said that in his opinion the workman was not entitled also to workmen's compensation in respect of the periods for which he had received injury benefit under the Act of 1948; the right to compensation did not arise before the appointed day merely because the workman suffered from the disease, if he had ceased to suffer from it on the appointed day (see ss. 1, 55, 80 (1) of the Act). He would dismiss the appeal.

LORD NORMAND concurred.

LORD OAKSEY dissented.

LORD MORTON OF HENRYTON, dissenting, agreed that the workman's right to compensation did not arise before the appointed day. He fell within the exception to the proviso in s. 89 (1) if he was insured against the attack of dermatitis before it arose. His counsel contended that he was not relying on reg. 8 of the regulations made under s. 55 (4). The House should not decide the matter on the material now before it, and the case should be remitted to the arbitrator to decide that point.

LORD MACDERMOTT concurred in the dismissal of the appeal. Appeal dismissed.

APPEARANCES: *Gilbert Paull*, K.C., *C. M. W. Elliott* and *R. M. Everett* (*Corbin, Greener & Cook*, for *Morrish & Co.*, Leeds); *F. W. Beney*, K.C., and *R. Lambert* (*Gregory, Rowcliffe & Co.*, for *John Taylor & Co.*, Manchester).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COMPANY: REDUCTION OF CAPITAL

Ex parte Westburn Sugar Refineries, Ltd.

Lord Porter, Lord Normand, Lord Oaksey, Lord Reid and Lord Radcliffe. 5th April, 1951

Appeal from the Court of Session (First Division).

The appellant company sought to reduce its capital by forming an investment-holding company and transferring to the latter certain of its investments, principally holdings in private limited companies. The court remitted the matter to a reporter, who stated, on a detailed review of the transactions involved in the reduction, that it was proposed to effect the reduction of capital by transferring to the shareholders, in satisfaction of payment, assets greater in value than the amount by which the paid-up capital of the company was being reduced. The court refused the prayer of the petition, and the company now appealed. The House took time for consideration.

LORD NORMAND, who delivered his opinion first, said that the powers of the shareholders must be exercised so as to safeguard the rights of creditors, the just and equitable treatment of shareholders and the interests of the investing public. In consideration of the reduction of share capital the shareholders might decide to accept a transfer of assets to a holding company, the shares of which were to be held by them according to their respective interests in the capital of the transferor company. They could also decide that the transfer should be of such investments as were, according to their value in the company's balance sheet, the equivalent of the amount of the proposed reduction of share capital. But in an arrangement in which assets were taken at balance-sheet values there was the possibility that the scheme of reduction might be used as a means of defeating or injuring the rights of creditors or deceiving future investors. The material matter was not, however, the value of the investments which the company proposed to transfer, but the value of those assets which it would retain. The company was reported to be in a strong position in respect of its retained assets and its liabilities. The creditors were amply provided for, and its capital was in excess of its requirements. It was also reported that the shareholders were not prejudiced by the proposals. The proposed reduction was therefore not open to objection, and might properly be confirmed.

The other noble lords agreed that the appeal should succeed. Appeal allowed.

APPEARANCES: *J. L. Clyde*, K.C. (Scottish Bar), and *Philip Sykes* (English Bar), *R. H. McDonald* (Scottish Bar) (*Slaughter and May*, for *Davidson & Syme, W.S.*, Edinburgh).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF APPEAL

"FACTORY": REPAIR BUILDING

Thurogood *v.* Van Den Berghs & Jurgens, Ltd.

Cohen, Asquith and Birkett, L.JJ. 2nd March, 1951

Appeal from Devlin, J.

The plaintiff, an electrician, was injured by the blades of an electric fan which he was testing in the course of his employment. The test was being carried out in a building of his employers, the defendants, in which repair and maintenance work was done and which was separate from their main factory where margarine was manufactured. The fan operated in one of the ventilators of the main factory building. The plaintiff claimed damages, alleging breach by the employers of their duty to fence under s. 14 of the Factories Act, 1937, and breach of their common-law duty to provide a safe system of work. Devlin, J., gave judgment for the employers, holding that the separate building constituted a separate factory within s. 151 (6) of the Act of 1937; that the fan was an article which had been taken into that separate factory for repair; that it was not part of the machinery of that separate factory; and that it therefore did not require to be fenced. He also found for the defendants at common law, for although, in his judgment, there had been negligence on the part of the defendants the plaintiff had failed to prove that his injuries were the direct consequence of that negligence. The plaintiff appealed. (*Cur. adv. vult.*)

COHEN, L.J., said that in his opinion the work which was being done in the repair building was incidental to the purpose of making margarine for sale, within the meaning of s. 151 (1), so that the fencing requirements of s. 14 applied. Testing of machinery was incidental to the main process of manufacture, and it did not cease to be so if it was carried on outside the main building. He thought that the plaintiff was entitled to succeed in his claim under the Act, and he agreed with the judgment which Asquith, L.J., was about to read, holding that the appeal should also succeed at common law.

ASQUITH, L.J., agreeing that the claim under the Act succeeded, said, on the common-law claim, that an employer who had created or permitted a dangerous condition to arise was reasonably expected to foresee and provide against the possibility of injury resulting from it, even though it so resulted through the intermediation of an act of inadvertence by the employee and even though that act of inadvertence was of a character which could not be precisely forecast and remained in the result "unexplained." It was enough if the employer ought reasonably to anticipate that injury or damage of some sort to a workman was likely to result; and, in applying his foresight to that question, the employer could not leave out of account the tendency of factory operatives to commit acts of inadvertence.

BIRKETT, J., agreed.

Appeal allowed. Leave to appeal to the House of Lords.

APPEARANCES: *F. W. Beney*, K.C., and *Martin Jukes* (*Rowley, Ashworth & Co.*); *A. D. Gerrard*, K.C., *John Thompson* and *D. Tolstoy* (*Gascoin & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

MAINTENANCE AGREEMENT LACKING CONSIDERATION: ENFORCEABILITY

Combe *v.* Combe

Asquith, Denning and Birkett, L.JJ. 6th March, 1951

Appeal from Byrne, J. (*ante*, p. 30; 66 T.L.R. (Pt. 2) 983).

The defendant, a divorced husband, agreed in writing in 1943 to allow the plaintiff, his former wife, £100 a year free of tax by way of permanent maintenance. Being aware that he was not then in good financial circumstances, she made no claim to permanent maintenance then; but in 1950 she brought this action on the agreement, claiming arrears under it. Byrne, J., held the plaintiff (wife) entitled to succeed on the principle laid down by Denning, J., in *Central London Property Trust, Ltd.* v. *High Trees House, Ltd.* [1947] K.B. 130; *Robertson* v. *Minister of Pensions* [1949] 1 K.B. 227; 92 SOL. J. 603; and *Bob Guinness, Ltd.* v. *Salomonsen* [1948] 2 K.B. 42. The defendant (husband) appealed. (*Cur. adv. vult.*)

DENNING, L.J., said that the principle in the *High Trees* case, *supra*, should not be stretched too far, lest it should be endangered. It did not create causes of action where none existed before: it only prevented a party from insisting on his strict legal rights when it would be unjust to allow him to do so, having regard to

the dealings which had taken place between the parties: see the case in the House of Lords where the principle was first stated, *Hughes* v. *Metropolitan Railway Co.* (1877), 2 App. Cas., at p. 448, and the case in the Court of Appeal which enlarged it, *Birmingham and District Land Co.* v. *London and North Western Railway Co.* (1888), 40 Ch.D., at p. 286. Seeing that the principle never stood alone as giving a cause of action in itself, it could never do away with the necessity of consideration when that was an essential part of the cause of action. Consideration still remained a cardinal necessity of the formation of contract, though not of its modification or discharge. So the real question here was whether there was sufficient consideration to support the promise made by the husband. No agreement by the wife could take away her right to apply to the court for maintenance (see *Hyman* v. *Hyman* [1929] A.C. 601, as interpreted in *Gaisberg* v. *Storr* [1950] 1 K.B. 107). But clearly there was here no promise by the wife, express or implied, to forbear from applying to the court. All that happened was that she did in fact forbear to do so: she did an act in return for a promise; but he could not find any request by the husband, express or implied, that she should so forbear. Her forbearance was not intended by him, nor was it done at his request. It was therefore no consideration. No agreement for maintenance made in the course of divorce proceedings before decree absolute was valid unless sanctioned by the court (*Emanuel* v. *Emanuel* [1946] P. 115). Such agreements were often made, but their only valid purpose was to serve as a basis for a consent application to the Divorce Court. The reason why such agreements were invalid, unless approved, was because they were so apt to be collusive. Some wives were tempted to stipulate for extortionate maintenance as the price of giving the husband his freedom. It would be a great pity if this salutary requirement of obtaining the sanction of the Divorce Court could be evaded by taking action in the King's Bench Division. The appeal should be allowed.

ASQUITH, L.J., agreeing that the appeal succeeded, said that it was unnecessary to express any view as to the correctness of the decision in the *High Trees* case, *supra*, though he must not be taken to be questioning it.

BIRKETT, L.J., agreed.

APPEARANCES: *W. Lee* (*Braikenridge & Edwards*); *Peter Rawlinson* (*Lee & Pembertons*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

MAINTENANCE: WIFE'S APPLICATION FOR INCREASE

Tulip *v.* Tulip

Lord Asquith of Bishopstone, Birkett, L.J., and Harman, J.

10th May, 1951

Appeal from Barnard, J. (*ante*, p. 91).

The appellant and the respondent were married in 1916, and there were no children of the marriage. In June, 1932, they entered into a deed of separation, the husband covenanting to pay his wife £3 a week (net). Those payments had been continued regularly ever since. In December, 1949, the wife asked the husband to increase the amount of the payments, but he refused. His income had greatly increased since 1932. The wife applied for maintenance under s. 23 of the Matrimonial Causes Act, 1950, alleging wilful neglect to maintain her. She relied on the increase in her husband's means, the deterioriation in her health, and the fall in the value of money. The husband's defence was that he relied by way of estoppel on the deed, his obligations under which he did not dispute. Barnard, J., dismissed the application on the grounds that the wife had voluntarily entered into the deed of separation, and that if the application were to succeed such a deed would become valueless. The wife appealed. (*Cur. adv. vult.*)

BIRKETT, L.J., reading his judgment, said that Lord Asquith of Bishopstone authorised him to say that he concurred in it. By the deed the wife had undertaken to maintain herself and discharge her own liabilities in return for the payments to be made by the husband. The payments to be made were regarded by both parties as reasonable in 1932; but in his (his lordship's) view the existence of the deed was no bar to an application by the wife under s. 23 at the present time. The deed was not an estoppel for the wife. The real question was whether the husband, at the time when the application was made, was providing reasonable maintenance for the wife. The wife's application was not a breach of her covenant to meet her own liabilities. The appeal would be allowed, and there would be a new hearing on the issue whether in fact the husband was providing reasonable maintenance.

HARMAN, J., dissenting, said that in his view a refusal by the husband to pay more than the sum which he had contracted to pay could not be wilful neglect to provide reasonable maintenance for the wife. When the deed was entered into the parties must have contemplated that circumstances might alter in the future. The wife wished to retain all the other advantages which she obtained under the deed and to repudiate this one clause, and in his view the appeal ought to be dismissed.

Appeal allowed. Leave to appeal to the House of Lords.

APPEARANCES: *John Latey* (*Peacock & Goddard*); *R. J. A. Temple*, K.C. (*Hyde, Mahon & Pascall*, for *Keenlyside and Forster*, Newcastle-on-Tyne).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

LEASE: SALE OF POULTRY BY BUTCHER

Hartshorn *v.* Angliss

Vaisey, J. 27th April, 1951

The lessee of a shop covenanted in the lease that he would not without the previous consent in writing of the lessor carry on in the leased shop any business other than that of a butcher. The lessee asked for a declaration that the trade or business of a butcher referred to in the covenant included the sale of poultry in conjunction with that of meat.

VAISEY, J., said that the case depended on the construction of ordinary English words. The point was whether the sale of poultry by the plaintiff was part of the business of a butcher or another business activity, namely, that of a poulterer, carried on by a butcher. The evidence established that it was understood that a butcher sold poultry, and he (the learned judge) was satisfied that a butcher was almost universally to be found selling poultry as part of and incidental to his business. Declaration for the plaintiff.

APPEARANCES: *Denys Buckley* (*George Carter & Co.*); *L. A. Blundell* (*Sloper, Potter & Chapman*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

FRAUD: KNOWLEDGE AND REPRESENTATION BY DIFFERENT PERSONS

Armstrong and Another *v.* Strain and Others

Devlin, J. 14th March, 1951

Action.

The plaintiffs bought a defective house as the result of innocent misrepresentations made by the second defendant, an agent, on the faith of information given to him by his principal, the first defendant, to whose knowledge, however, that information was false. The house having become uninhabitable by subsidences shortly after its purchase, the plaintiffs brought this action for damages against the two defendants referred to and a number of others. The material contention of the plaintiffs was that the representations of the agent were untrue to the knowledge of the principal and that, principal and agent being one in law, fraud was thereby established, reliance being placed on *London County Freehold and Leasehold Properties, Ltd.* v. *Berkeley Property and Investment Co., Ltd.* (1936), 155 L.T. 190. (*Cur. adv. vult.*)

DEVLIN, J., said that the defendants relied on *Gordon Hill Trust, Ltd.* v. *Segall* (1941), 85 SOL. J. 191, as being to the opposite effect from the *Berkeley* case, *supra*. On the principle in *Young* v. *Bristol Aeroplane Co., Ltd.* [1944] 1 K.B. 718, he regarded himself as under a duty, as he was satisfied that there was a real conflict between those two decisions, to decide which of them was the more consistent with earlier authority and settled doctrine. On a consideration of the earlier authorities, especially *Cornfoot* v. *Fowke* (1840), 6 M. & W. 358; *Fuller* v. *Wilson* (1842), 3 Q.B. 58; *Ormrod* v. *Huth* (1845), 14 M. & W. 651; *Derry* v. *Peek* (1889), 14 App. Cas. 337; *Ludgater* v. *Love* (1883), 44 L.T. 694, and *Pearson* v. *Dublin Corporation* [1907] A.C. 351, his conclusion was that the decision in the *Berkeley* case, *supra*, could not be supported on the authority of *Pearson* v. *Dublin Corporation*, *supra*. He demurred from the statement of Slesser, L.J., in the former case that *Cornfoot* v. *Fowke*, *supra*, was disapproved in *Pearson* v. *Dublin Corporation*, *supra*. Apart from direct authority, there were many *dicta* which showed that an action for deceit must be supported by proof of dishonesty, *mala fides* and actual fraud; and that the knowledge of falsity was understood in the narrow sense of conscious knowledge of falsity.

It was precisely that conscious knowledge which could never be present in the case of an innocent division of ingredients, as in such a case the knowledge which the principal had was impliedly the knowledge which a man was able to display under direct questioning. If in such circumstances a principal were to be held liable, fraud would be found in many cases of innocent division where it could never be found against a single person. There was no way of combining an innocent principal and agent so as to produce dishonesty. He had come to the conclusion that the decision of the Court of Appeal in *Gordon Hill Trust* v. *Segall, supra*, which adopted and approved *Cornfoot* v. *Fowke, supra*, was to be preferred to that in the *Berkeley* case, *supra*; and he accordingly followed and applied it.

Judgment for the defendants.

APPEARANCES: *Eric Myers* and *C. Grundy* (*Manley & Cooke*); *Neil Lawson* and *P. Bloomfield* (*Richardson Sowerby, Holden & Co.*, for *William Bygott & Co.*, Rayleigh (first defendants); *Bentleys, Stokes & Lowless* (remaining defendants)).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DIVISIONAL COURT

ADULTERATED MILK: "ACT OR DEFAULT"

Lamb *v.* Sunderland & District Creamery, Ltd.

Lord Goddard, C.J., Oliver and Cassels, JJ. 5th April, 1951

Case stated by Durham justices.

The defendants, milk wholesalers, sold to a retailer, who sold it to the prosecutor, milk shown on analysis to be deficient in fat. They were prosecuted under s. 83 (3) of the Food and Drugs Act, 1938. It was established that the milk had not been tampered with between its leaving their hands and reaching the prosecutors. The defendants had obtained the milk from suppliers under a warranty, but, owing to the difficulty of getting laboratory staff, had not themselves tested it. Section 83 (3) empowered the prosecutor to proceed against the defendants direct, without proceeding against the retailer (who himself could, if prosecuted, have preferred an information against the defendants under s. 83 (1)), but the defendants could only be convicted on proof that the contravention was due to their "act or default." The justices held that, as there was no evidence of actual adulteration of the milk by the defendants, and as they had given a reasonable explanation of their failure to test the milk before it was bottled and had not therefore acted negligently, there had been no act or default by them within the meaning of s. 83 (3) of the Act of 1938. The justices accordingly dismissed the information. The prosecutor appealed.

LORD GODDARD, C.J., said that s. 83 (1) was very wide in its terms; the very fact of an article supplied not being of the nature, substance or quality demanded there supplied the *mens rea*. The question was whether the justices were right in dismissing the information on the ground that there had been no "act or default" by the defendants within the meaning of s. 83 (3). In his opinion their view was not correct on the facts. "Act or default" meant wrongful act or default; but there was a wrongful act or default in the present case. On the findings of the justices it was clear that when the milk was supplied by the defendants to the milk vendor who sold it to the prosecutor it was deficient in fat, and, therefore, not of the nature, substance, or quality demanded.

OLIVER and CASSELS, JJ., agreed.

Appeal allowed.

APPEARANCES: *Vernon Gattie* (*Sharpe, Pritchard & Co.*, for *J. K. Hope*, Durham); *J. R. Cumming-Bruce* (*Wrinch & Fisher* for *Freeman, Son & Curry*, Durham).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DIVISIONAL COURT

BUILDING: PROCEEDINGS NOT PROPERLY AUTHORISED

Bob Keats, Ltd. *v.* Farrant

Lord Goddard, C.J., Oliver and Cassels, JJ. 6th April, 1951

Case stated by Rutland justices.

The clerk to Rutland Rural District Council preferred an information against the defendant company in respect of unlicensed building work contrary to reg. 56A (2) of the Defence (General) Regulations. By the Control of Building Operations, etc., Order, 1947 (S.R. & O., 1947, No. 75), authorities, including Rutland Rural District Council, are authorised to proceed under reg. 56A "acting by any officer appointed by them either generally or specifically for the purpose." The rural district council passed a resolution, which was signed by their clerk, that these proceedings should be taken against the defendant company and that a named firm of solicitors should be instructed to prosecute. The defendant company contended that the prosecution was not validly instituted in the absence of a resolution appointing the clerk to undertake it. The clerk contended that by virtue of his office he was entitled to institute the proceedings without being specifically appointed to do so under the order of 1947. The justices upheld that contention, and convicted the company, who now appealed.

LORD GODDARD, C.J., said that the council had passed a resolution that the defendant company should be prosecuted, but had omitted to pass any resolution authorising their clerk to take proceedings. It was quite clear that when the order of 1947 referred to the appointment of an officer either generally or specifically for the purpose of taking proceedings, it contemplated that there would be a formal appointment by resolution under s. 277 of the Local Government Act, 1933; and if a resolution had been passed by the council here authorising the clerk to take proceedings the matter would have been in order; but it had not and, technically, therefore, he had no authority to act. The justices should have dismissed the information.

OLIVER and CASSELS, JJ., agreed.

Appeal allowed.

APPEARANCES: *F. Donald McIntyre* (*Vizard, Oldham, Crowder and Cash*, for *Oldham, Marsh & Son*, Melton Mowbray); *B. S. Wingate-Saull* (*Treasury Solicitor*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DETINUE: MEASURE OF DAMAGES

Joseph (D.), Ltd. *v.* Ralph Wood & Co., Ltd.

McNair, J. 6th April, 1951

Action.

The defendants, manufacturers of woollen textiles, contracted to sell a quantity of worsted cloth to the plaintiffs, exporters of woollen goods, who contracted to sell it to an American corporation. After the property in the goods had passed to the plaintiffs, the defendants recalled them while in course of delivery and returned them to stock. The plaintiffs brought this action for damages for detinue and conversion.

MCNAIR, J., said that it was argued that the buyers had no right to sue in detinue and conversion as the property and right to possession in the goods had passed from them to the American corporation by a contract of sale almost contemporaneous with that between the plaintiffs and the defendants. But on the facts there had been no such unconditional appropriation of the goods to the corporation as to divest the buyers of their right to possession. They were therefore entitled to sue. On the authority of *Rosenthal* v. *Alderton (R.) & Sons, Ltd.* [1946] K.B. 374; 90 SOL. J. 163; *Sachs* v. *Miklos* [1948] 2 K.B. 23, and *Munro* v. *Wilmott* [1949] 1 K.B. 295; 92 SOL. J. 662, the true measure of damages was the value of the goods at the date of judgment. But it had been argued that, as the buyers had resold the goods on terms that left them only a small profit, the true loss suffered by them was negligible. That argument, however, was inconsistent, first, with the principle that a bailee was entitled to recover in detinue the full value of the goods retained; and, secondly, with *The Arpad* [1934] P. 189, where the Court of Appeal held that in a case of conversion and detinue the true measure of damages was the value of the goods at the date of non-delivery, disregarding circumstances peculiar to the plaintiff, such as resale: see *per* Greer, L.J., at pp. 214 and 216, and *per* Maugham, L.J., at p. 226. In the circumstances, the proper measure of damages was the value of the goods at the date of the trial of the action, less so much of the purchase price as had already been repaid. The plaintiffs were also entitled to an indemnity against any claim against them by the American corporation. Judgment for the plaintiffs.

APPEARANCES: *D. N. Pritt*, K.C., and *C. A. Morgan Blake* (*H. Davis & Co.*); *Arthian Davies*, K.C., and *George Pollock*, K.C. (*Jaques & Co.*, for *Armitage, Sykes & Hinchcliffe*, Huddersfield).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY DIVISION

DIVORCE: CONDUCT OF UNDEFENDED CAUSES

Harland *v.* Harland

Lord Merriman, P. 13th March, 1951

Intervention by the King's Proctor.

The King's Proctor alleged that a wife petitioner, who had been granted a decree *nisi* on her undefended petition, had committed

adultery on various occasions between November, 1948, and April, 1949, had lived with the adulterer from April, 1949, to October, 1949, and had given birth to a child on 18th August, 1949, to whom she had made no reference in her petition, dated 29th September, 1949, or at the hearing. The adultery charged in the petition against the husband was alleged to have taken place on a date in March, 1949, at a hotel, and from 8th March, 1949, to the date of the petition at a farmhouse where he was living.

LORD MERRIMAN, P., said that he hoped that notice would be taken of his observations. After formal questions had at the hearing of the petition been put to the wife in correct form, her evidence was contained in the answers to six questions. To five leading questions, which were supposed to cover the whole of her matrimonial life, and her grievances against her husband, she gave the answer "Yes," and to the sixth, whether she had ever lived with her husband since she left him, the answer was "No." Counsel for the King's Proctor had stated that in almost every instance in which the King's Proctor's attention was drawn to cases which had gone wrong the same sort of thing appeared. It was not the proper way of trying an undefended divorce case to allow counsel to ask leading questions which put the answers into the mouth of the petitioner, and then to pronounce a decree *nisi*. Divorce Commissioners were entrusted with the duties of a High Court judge; and that method of trial would not have been tolerated at a time when judges of the division were hearing undefended divorce cases. Petitioners must be allowed to tell their own stories.

Decree rescinded.

APPEARANCES: *J. G. St. G. Syms (K.P.)*; *N. Black* (*Wood, Wethey & Co.*, Middlesbrough).

(Reported by R. C. CALBURN, Esq., Barrister-at-Law.)

SURVEY OF THE WEEK

ROYAL ASSENT

The following Bills received the Royal Assent on 10th May:—

Aberdeen Chartered Accountants' Widows' Fund Order Confirmation
Airdrie Corporation Order Confirmation
Canterbury Extension
Edinburgh Chartered Accountants' Annuity, &c., Fund Order Confirmation
Fire Services
Humber Conservancy
Long Leases (Temporary Provisions) (Scotland)
National Health Service
Reverend J. G. MacManaway's Indemnity
Salmon and Freshwater Fisheries (Protection) (Scotland)
Sea Fish Industry
University of Edinburgh (Royal (Dick) Veterinary College) Order Confirmation

HOUSE OF LORDS

A. PROGRESS OF BILLS

Read First Time:—

Common Informers Bill [H.C.]	[8th May.
Criminal Law Amendment Bill [H.C.]	[8th May.
Fireworks Bill [H.C.]	[8th May.
London County Council (Money) Bill [H.C.]	[8th May.
Nottingham City and County Boundaries Bill [H.C.]	[8th May.
Pet Animals Bill [H.C.]	[8th May.
Sutton and Cheam Corporation Bill [H.C.]	[8th May.
Worcester Corporation Bill [H.C.]	[8th May.

Read Second Time:—

British Transport Commission Bill [H.C.]	[9th May.
Dangerous Drugs Bill [H.L.]	[8th May.
Great Yarmouth Port and Haven Bill [H.C.]	[9th May.
Trent River Board Bill [H.C.]	[9th May.

Read Third Time:—

Dee and Clwyd River Board Bill [H.L.]	[8th May.
Lancashire County Council (General Powers) Bill [H.L.]	[8th May.
Liverpool Extension Bill [H.L.]	[8th May.
Royal Albert Hall Bill [H.L.]	[9th May.
Sunderland Corporation Bill [H.L.]	[8th May.

In Committee:—

Leasehold Property (Temporary Provisions) Bill [H.C.] [8th May.

B. DEBATES

On the Committee Stage of the **Leasehold Property (Temporary Provisions) Bill,** VISCOUNT SIMON asked what were the limits of the privilege conferred by cl. 1 of the Bill (Continuation of expiring long tenancy where tenant in occupation)? It was an entirely one-sided privilege to the advantage of the tenant and against the interests of the landlord. Although the Bill was described as a Bill to protect "occupiers of residential property" the protection of the clause was obtained by a non-resident who resided immediately before the expiry of the lease. Surely the Government did not mean to protect such people? It could not intend that advisers should be able to say: "You have been the tenant in the lease, but other people have been occupying the place. Nevertheless, it would be well worth your while to pay a tenant who is living there pretty handsomely to let you in just before your lease expires, because then you will get two years more of your lease at the old rent." He proposed an amendment which would only protect tenants who resided in the premises throughout the period from 20th November, 1950 (the date on which the Bill became known to the public), to the date of expiry of the lease. LORD ELKIN said it made no difference to the owner whether the tenant who was residing there before 20th November was still living there, with the right to a further term, or whether the person who took it over from the tenant acquired a similar right. The amendment would be very inequitable as it would deprive a person who, to use Lord Simon's example, had paid a premium for the right to occupy, of any benefit from his premium. LORD LLEWELLIN thought this argument quite contrary to the purposes of the Bill—which were to protect ground-lessees who had been in occupation over a long period of time, from being summarily ejected on expiry of their leases.

VISCOUNT MAUGHAM said the person who got the benefit under cl. 1 got it irrespective of whether he wanted it or not. Some provision ought to be inserted to enable him to prevent the clause operating if he did not want it. The LORD CHANCELLOR said a qualifying period would avoid the type of case mentioned by Lord Simon. On the other hand it could create very considerable hardships on tenants who for business or health reasons could not live in the property during the proposed qualifying period. On a division, Lord Simon's amendment was carried.

LORD SIMON next proposed to substitute in cl. 1 for the words "a tenant . . . living in the property," the words: "a tenant . . . living in a dwelling-house comprised in the property." The LORD CHANCELLOR accepted this amendment. It had always been intended that the Bill should apply to residential property properly so called.

LORD SIMON'S next amendment was designed to prevent the clause applying at all to those cases in which before 20th November, 1950, a person had, for valuable consideration, entered into an agreement under which, but for the clause, he would have been entitled to vacant possession of the whole or some part of the premises on expiry of the lease. LORD DOUGLAS OF BARLOCH asked why was the amendment directed only to people who had entered into agreements which had not yet been executed? What difference was there between that case and that of a person who had purchased a reversion upon a lease, to which the Bill would apply, and had actually paid the full purchase price? The LORD CHANCELLOR said Lord Simon's point was one of great substance. The Bill would clearly cause some hardship to people who had bought reversions, but if they tried to avoid that hardship they would destroy the whole structure of the Bill. It was impossible to differentiate between Lord Douglas' two cases, and between purchases for investment and purchases for own occupation. LORD SIMON withdrew his amendment, saying he was glad to have Lord Jowitt's assurance that the Bill would be only temporary and would be succeeded by a Bill which would hold the balance fairly between landlord and tenant. [8th May.

HOUSE OF COMMONS

A. Progress of Bills

Read First Time :—

Directors, &c., Burden of Proof Bill [H.C.] [8th May.
To modify certain enactments relating to the burden of proof in criminal proceedings against directors and certain officers of bodies corporate.

Ministry of Agriculture and Fisheries Provisional Orders (Suffolk) Bill [H.C.] [10th May.
To confirm certain Provisional Orders of the Minister of Agriculture and Fisheries relating to the County of Suffolk.

Pier and Harbour Provisional Order (Lymington) Bill [H.C.] [10th May.
To confirm a Provisional Order made by the Minister of Transport under the General Pier and Harbour Act, 1861, relating to Lymington.

Telegraph Bill [H.C.] [9th May.
To increase the maximum rate for ordinary written telegrams.

Walsall Corporation (Trolley Vehicles) Provisional Order Bill [H.C.] [10th May.
To confirm a Provisional Order made by the Minister of Transport under the Walsall Corporation Act, 1925, relating to Walsall Corporation trolley vehicles.

Workmen's Compensation (Pneumoconiosis) Bill [H.C.] [8th May.
To allow compensation to be paid in respect of persons who acquired pneumoconiosis as a result of their employment prior to the fifth day of July, nineteen hundred and forty-eight, and who were excluded from the then Workmen's Compensation Acts, or regulations made under those Acts, because of time limits contained in them.

Read Second Time :—

Finance Bill [H.C.] [8th May.
Rivers (Prevention of Pollution) (Scotland) Bill [H.C.] [9th May.

In Committee :—

National Insurance Bill [H.C.] [9th May.

B. Questions

Rent Subsidies

The Minister of Local Government and Planning stated that the estimated total cost of rent subsidies, including local and national accounts, was about £60,000,000 for 1950–51. The amount of the subsidy depended on the number of houses built. [8th May.

Improvement Grants

Mr. Dalton said he was not aware that the terms of para. 3 (iii) of the Practice Notes issued to local authorities under circular 4/51 were giving rise to misunderstanding. The position was that houses let to employees, as distinct from houses used for service occupancy without rent, were eligible in appropriate cases for an improvement grant under the Housing Act, 1949. [8th May.

Mr. Dalton said eighteen applications for improvement grants had been approved by him for the West Riding of Yorkshire during 1950. It was true that the money had to be found by local authorities out of their total allocations for repairs. The granting of these applications was primarily for the local authorities, and he did not think he ought to interfere with them. He was, however, quite prepared to grant applications which came to him. [8th May.

Repairs and Maintenance (Costs)

In reply to Sir Waldron Smithers, who asked whether he was aware that the cost of repairs and maintenance of properties had increased by about 300 per cent. over pre-war level and that properties throughout the country were falling into a state of disrepair, Mr. Dalton said he and his predecessor had received various representations on this subject. It was very difficult to see how the problem could be solved without creating even more serious problems in other directions. [8th May.

Rent Tribunals (Appeals)

Mr. Hugh Dalton said, in answer to Mr. Derek Walker-Smith, that he had no power to issue a direction to chairmen of rent tribunals pointing out the desirability, when so requested in difficult or complex cases, of issuing their decisions in a reasoned form as speaking orders so that their decisions might be subject to review and might benefit by the guidance of the High Court of Justice. Mr. Walker-Smith said he meant a letter of advice and not a direction. Had the Minister studied the recent case of *R.* v. *Northumberland Rent Tribunal*, and did he not agree that the best of these tribunals would welcome the opportunity of such guidance and that the worst of them ought to have it? Mr. Dalton said he did not agree. The question of a right of appeal from a decision of the rent tribunal to the courts was discussed in the debate on the Landlord and Tenant (Rent Control) Act, 1949. That was what was involved here and it would merely result in the clogging up of the lists of these tribunals. They had dealt with a very large number of cases—85,000—and to give a right of appeal would greatly prolong the procedure. [8th May.

Industrial Re-rating

Mr. Dryden Brooke asked whether, in view of the growing resentment in local government circles at the inequitable incidence of local rating as between the business community and the residential people, the Minister would take steps to abolish the 75 per cent. reduction in assessment for local rating purposes enjoyed by business establishments at the present time. The concession had been granted in circumstances completely different from those ruling to-day. Mr. Dalton said these matters had been discussed, and he shared the view of his predecessor that the balance of argument was against reversing the de-rating arrangements. The Government did not desire at the present moment to increase the costs of industry. The Exchequer Equalisation Grant introduced in the Act of 1948 had done very much better for many local authorities—and he was glad that it had—than re-rating would have done for them. [8th May.

Hotel Residents (Tax)

Mr. Douglas Jay said that hotel proprietors could be required to give lists of residents under s. 104 of the Income Tax Act, 1918. The object of the lists was to enable inspectors of taxes to obtain returns from hotel residents who might otherwise escape their notice. [8th May.

STATUTORY INSTRUMENTS

Boot and Shoe Repairing Wages Council (Great Britain) Wages Regulation (Holidays) Order, 1951. (S.I. 1951 No. 778.)
Butter Order, 1951. (S.I. 1951 No. 801.)
Civil Defence (Designation of the Minister of Health and the Minister of Local Government and Planning) Order, 1951. (S.I. 1951 No. 755.)
Coal Industry Nationalisation (Valuation) (Amendment) Regulations, 1951. (S.I. 1951 No. 802.)
Coal Mines Regulation (Suspension) Order, 1951. (S.I. 1951 No. 754.)
Dried Fruits (Amendment) Order, 1951. (S.I. 1951 No. 771.)
Export of Goods (Control) (Amendment No. 8) Order, 1951. (S.I. 1951 No. 785.)
Fire Services (Conditions of Service) (Scotland) (Amendment) Regulations, 1951. (S.I. 1951 No. 775 (S. 46).)
Fur Wages Council (Great Britain) Wages Regulation (Holidays) Order, 1951. (S.I. 1951 No. 772.)
House of Commons (Redistribution of Seats) (Scotland) Order, 1951. (S.I. 1951 No. 756 (S. 42).)
House of Commons (Redistribution of Seats) (Scotland) (No. 2) Order, 1951. (S.I. 1951 No. 757 (S. 43).)
House of Commons (Redistribution of Seats) (Scotland) (No. 3) Order, 1951. (S.I. 1951 No. 758 (S. 44).)
Housing (Forms) (Scotland) Regulations, 1951. (S.I. 1951 No. 774 (S. 45).)
Newcastle upon Tyne (Amendment of Local Enactment) Order, 1951. (S.I. 1951 No. 782.)
Non-Ferrous Metals Prices (No. 4) Order, 1951. (S.I. 1951 No. 773.)
Oils and Fats (Amendment No. 3) Order, 1951. (S.I. 1951 No. 783.)
Safeguarding of Industries (Exemption) (No. 5) Order, 1951. (S.I. 1951 No. 769.)
Tin Box Wages Council (Great Britain) Wages Regulation (Holidays) Order, 1951. (S.I. 1951 No. 777.)
Trading with the Enemy (Custodian) (No. 2) Order, 1951. (S.I. 1951 No. 779.)
This order vests in the Custodian of Enemy Property all pre-war German-owned trade marks registered in the United Kingdom Register of Trade Marks. The vesting is without

prejudice to the ultimate future of the marks and should not be read to mean that they will necessarily be expropriated.

Trading with the Enemy (Custodian) (No. 3) Order, 1951. (S.I. 1951 No. 780.)

This order vests in the Custodian of Enemy Property pre-war German-owned United Kingdom patents and certain German interests in pre-war patents. The order will not interrupt but will continue the implementation of the International Accord of 1946 on the Treatment of German-owned Patents (Cmd. 7359), under which inventions the subject of pre-war German-owned United Kingdom patents are in general made available to the public.

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of he staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 88-90 Chancery Lane, W.C.2, and contain the name and address of the subscriber, and a stamped addressed envelope.

Settled Legacy—PAYMENT OF INTEREST OUT OF RESIDUE

Q. We act for the executors and trustees, who are the same people, of the will of a widow who died in 1944. Under her will, made in 1938, she gave to her trustees the sum of £50 on trust to invest the same in trustee securities and declared that the trustees should hold the £50 and the investments and income thereof in trust for her granddaughter if and when the granddaughter attained the age of twenty-five years, but that if the granddaughter did not reach the age of twenty-five years, then the £50, the investments and income should sink into residue. Given to understand that there was a later will made in 1941, the present executors took little active steps at the time of death, thinking that, as it had been lost, a reconstruction of the 1941 will would be set up, but after long delays and protracted litigation the executors mentioned above eventually obtained a decree which found for the validity of the 1938 will under which they were appointed and probate was granted to them in 1950. The estate consisted of about £50 at a bank on deposit account in the testatrix's name and a small property which was sold in 1950, with vacant possession, for about £1,000. This property was occupied at the time of her death by the testatrix and her son and his family. The son is one of two residuary legatees. There was no income from the property as the son did not pay rent. He did, however, pay the ground rent and rates and it is intended to debit his share in the residue with the Sched. A tax that has now been paid by the executors for the period 1944 onwards. In the circumstances, the only accumulation to the estate since the date of death was the interest which accrued to the small amount on deposit, but the executors were not, until late in 1950 when the property was sold and the money was transferred from the bank, in a position to invest the £50 in trust for the granddaughter, who, by the way, reaches the age of twenty-five years late in 1951.

Should the executors pay out of the estate to themselves as trustees the sum of £50 and interest at 4 per cent. from a date one year after the death of the testatrix to the present date and then invest the principal and interest for the benefit of the granddaughter, or should the executors be liable for interest on the £50 only from the date when they were first in a position to invest £50, which, as already stated, was about six years after the date of death ?

A. In our opinion, the executors should appropriate to themselves as trustees the settled legacy of £50 and interest thereon at 4 per cent. per annum from the first anniversary of the testatrix's death, the interest being transferred less tax. The whole should then be invested as directed by the will. The rule requiring payment of the interest is one of administration so as to enable justice to be done as between the legatee and the persons interested in residue. The cases (*Pearson* v. *Pearson* (1802), 1 Sch. & Lef. 10 ; *Re Blackford* (1884), 27 Ch. D. 676) show that interest must be paid even though the assets may not be productive of income. It is only in cases like the present where delay in payment of a legacy occurs through no fault of the executors that interest is payable out of residue and it is just such cases that the rule requiring payment was designed to cover (*Re Morley's Estate* [1937] Ch. 491). If the payment was required because the delay was due to the executors' default that would appear to be a devastavit and payment of interest would have to be made out of the executors' own pockets.

NOTES AND NEWS

Honours and Appointments

The Lord Chancellor has appointed Sir JOHN HOWARD, Sir SORTAIN MACKLIN and Mr. C. S. REWCASTLE, K.C., to be members of the panel of arbitrators for the purposes of the Coal Industry Nationalisation Act, 1946.

Mr. F. A. WALLER, solicitor, of Newcastle, has been appointed City Coroner.

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Miscellaneous

On the results of The Law Society's Final Examination held on 12th, 13th and 14th March the John Mackrell Prize was awarded to Mr. J. K. Frankish, and not, as previously stated, to Mr. H. A. Howden. Mr. Frankish served his articles of clerkship with Mr. Howden, who was himself awarded the prize in 1924.

The Incorporated Council of Law Reporting for England and Wales announce that from 16th May their address is : 3 Stone Buildings (Basement), Lincoln's Inn, London, W.C.2, where all communications should be sent.

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THE SOLICITORS ACTS, 1932 TO 1941

On the 1st December, 1950, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that there be imposed upon WILFRID ARIEL EVILL, of Nos. 18–20 York Buildings, Adelphi, London, a penalty of £100, such penalty to be forfeit to His Majesty, and that he do pay to the applicant his costs of and incidental to the application and inquiry, such costs to be taxed by one of the Taxing Masters of the Supreme Court.

The said Wilfrid Ariel Evill appealed from the said order, and the appeal was heard by the Divisional Court (King's Bench Division) on the 1st May, 1951, when the court ordered that the appeal be dismissed with costs to be paid by the said Wilfrid Ariel Evill to the applicant.

SOCIETIES

The provincial meeting of the LOCAL GOVERNMENT LEGAL SOCIETY is to be held this year at the Council House, Birmingham, on Saturday, 26th May. The morning session is to be adressed by Mr. Thomas Alker, the Town Clerk of Liverpool, who will speak on "The Town Clerk in relation to his Council and its Committees." Members will be the guests of Birmingham Corporation for lunch, and will afterwards be taken to see the former municipal airport. Members attending are to notify the Organising Secretary, Mr. J. R. Haslegrave, Chief Assistant Solicitor, The Council House, Birmingham, by Monday, 21st May, at the latest.

OBITUARY

MR. H. O. STIDSTON-BROADBENT

Mr. Herbert Owen Stidston-Broadbent, solicitor, of Plymouth, died on 4th May. He was admitted in 1900.

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